

REMARKS

Applicants have received and reviewed an Office Action dated May 5, 2005. The Examiner allowed claims 1-3, 31, 35-38, and 43-46. The Examiner rejected claims 6-9 and 39-42. By way of response, Applicants make the following arguments.

For the reasons given below, Applicants submit pending claims are in condition for allowance and notification to that effect is earnestly solicited.

Rejection of Claims Under §§ 102(a) and (e) and 103(a)

The Examiner rejected claims 6, 8, and 39-42 under 35 U.S.C. §§ 102(a) and (e) as anticipated by Hei (US 6,024,986). The Examiner rejected claims 7 and 9 under 35 U.S.C. § 103(a) as being obvious over Hei (US 6,024,986). Applicants respectfully traverse these rejections.

The Hei reference does not qualify as prior art under 35 U.S.C. §§ 102(a), 102(e), or 103(a). Applicants submit herewith a Declaration under 37 C.F.R. § 1.131 by an inventor, John D. Hilgren, establishing that the presently claimed invention was invented before the May 24, 2000, date of the Hei reference. Thus, this reference cannot be employed as prior art under §§ 102(a), 102(e), or 103(a).

Further, a reference that is prior art under § 102(e) cannot be used, according to § 103(c), in an obviousness rejection if the subject matter of the cited reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. A clear statement of entitlement to the prior art exclusion by Applicants or a registered practitioner is sufficient evidence to establish the prior art exclusion (Examination Guidelines for 35 U.S.C. § 102(e) (as amended and revised) at IV(5); 1266 TMOG 80, January 14, 2003).

Applicants hereby make a clear statement of entitlement to exclude the Hei reference as prior art as provided by § 103(c). The Hei patent is assigned to the assignee of the present patent application. The Hei patent and the present patent application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicants do not otherwise acquiesce to the rejections and reserve the right to present arguments against them if necessary. For example, the Hei reference does not explicitly disclose the ratios recited in the claims.

Accordingly, based on the foregoing, it is submitted that the Hei reference does not anticipate or make obvious the present compositions and withdrawal of this rejection is respectfully requested.

Summary

In summary, Applicants submit that each of claims 1-3, 6-9, 31, and 35-46 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

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